



आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6737/Mum/2017
 (निर्धारण वर्ष / Assessment Year: 2006-07)

M/s. Lotus Investments Ltd. 1, Anup, Sub Beam Co.op Housing Society Juhu Versova Link Road Andheri (W), Mumbai-400 053.	बनाम/ Vs.	DCIT-Central Circle 2(3) CGO Building, 10 th Floor M.K. Road, Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACL-6350-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओरसे/ Appellant by	:	Shri Stany Saldanah-Director of the Assessee Company
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Vidhydhar .V - Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	15/04/2019
घोषणा की तारीख / Date of Pronouncement	:	25/04/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year [AY] 2006-07 contest the order of Ld. Commissioner of Income-Tax (Appeals)-48, Mumbai, [CIT(A)], *Appeal No. CIT(A)-48/I.T.-215/DCCC-2(3)/2015-16* dated 24/10/2017 on certain grounds of appeal contesting disallowance u/s 14A as well as interest disallowance. However, the disallowance u/s 14A has



not been contested during hearing before us and therefore, these grounds stand dismissed in *limine*. For interest disallowance, the assessee has raised following grounds of appeal: -

5. The Ld. CIT(A) erred in confirming the disallowance of a sum of Rs.7,82,402/- being interest paid on Bank Overdraft without considering the merits of the submission made by the appellant Company.
6. The Ld. CIT(A) erred in not appreciating the fact that the appellant Company had shown interest of Rs.6,83,467/- on the fixed deposit with SBI on which interest has been earned by the appellant against which overdraft is obtained and interest paid thereon.
7. The addition made by the Ld. A.O. of a sum of Rs.7,82,402/- and confirmed by the Ld. CIT (A) is bad in law and facts and hence directed the Ld. A.O. to delete the same.
8. The Ld. CIT (A) erred in making an observation that there is no nexus between the interest income earned and interest paid when the fact produced before the Ld. A.O. and the Ld. CIT (A) clearly indicate that the interest is earned on bank fixed deposits and interest is paid on the bank overdraft.

2. This is second round of appeal since the matter, in the first round, was remitted back by the Tribunal vide ITA No. 4701/M/09 dated 30/09/2013 with following directions: -

3. *A perusal of the order under appeal reveals that the disallowance of interest expenditure of Rs.7,82,403/- has been confirmed by the Id. CIT(A) observing that there was no nexus between the interest income accrued to the assessee on the FDR and the interest paid on the overdraft. We do not find any infirmity of the finding of the Id. CIT(A), so far the nexus between the interest income and the interest paid on overdraft is concerned. It may be observed that even if the FDR in question was kept as a security with the bank for the overdraft facility that itself does not establish any nexus between the interest earned on such FDR with the loan taken from the bank and the interest paid there upon. For the purpose of sanction of overdraft facility/loan, the bank generally requires some security which may be either in the shape of FDR or in the shape of any other valuable property including immovable property. Merely because the FDR was kept as a security for the overdraft facility, it does not establish any nexus between the two. Moreover the income from interest on the FDR has been computed under the head "other sources", whereas the interest paid on the loan amount has been claimed for business purposes.*

However, there seems to be a force in the second contention of the Id. A.R. to the effect that the overdraft loan amount was paid/used for the business or for the repayment of unsecured loan/interest of Rs.13.53 crores outstanding against the assessee. However, this contention of the assessee has not been taken into consideration by the authorities below. Under such circumstances we restore the issue back to the file of the Assessing Officer with a direction to examine as to whether the overdraft amount of loan upon which the payment of interest expenditure of Rs.7,82,403/- has been claimed was used for the repayment of the outstanding loans which were used by the assessee for



the purpose of its business. If the contention of the assessee in this respect is found true, then the assessee will be entitled to claim the expenditure being used for the purpose of business. Needless to say that the AO will give proper opportunity to the assessee to present its case and the evidences/documents, if any required, thereafter, to pass a speaking order in accordance with law.

The perusal of the same reveal that a direction was issued to Ld. AO to ascertain the facts whether the unsecured loans which were paid out of overdraft loans were used for the purpose of assessee's business or not. The deduction was allowable to the assessee in case of positive findings.

3. In the set-aside proceedings, the assessee, *inter-alia*, submitted that the amount of interest disallowance should be restricted to Rs.98,936/- being differential of interest on overdraft for Rs.7,82,403/- less interest earned on fixed deposits Rs.6,83,467/-. However, not convinced Ld. AO opined that the assessee disclosed interest income under the head *Other Sources* and the interest paid on overdraft could not be considered to be incurred to earn the interest income. Therefore, the additions as made in original assessment u/s 143(3) dated 31/12/2008 were retained. The stand of Ld. AO, upon confirmation by Ld. first appellate authority vide impugned order dated 24/10/2017, is under challenge before us.

4. The Director of the assessee company, *Shri Stany Saldanah*, drawing our attention to the documents placed in the *paper-book* submitted that the assessee earned interest income of Rs.6,83,467/- on FDRs held with *State Bank of India* and obtained overdraft facilities against the FDRs. The interest expended on such overdraft facility amounted to Rs.782,402/-. The credit facility so availed has been used to repay the unsecured loans standing in the books. Therefore, had the assessee not taken the overdraft facility but paid the unsecured loans directly instead of making FDRs, no



interest income would have accrued to the assessee and no disallowance would have been made in the hands of the assessee. The Ld. DR relied upon the stand of lower authorities.

5. Upon careful consideration of factual matrix, we find logic in the arguments advanced by Ld. AR since the basic facts are not in dispute. The assessee obtained overdraft facility against the FDRs and paid outstanding unsecured loans standing in assessee's books. Had the assessee not taken overdraft facility but paid the unsecured loans directly instead of parking the funds in FDRs, no interest income would accrue to the assessee and accordingly, no disallowance would be made in assessee's hand. Finding substantial force in the same, we direct Ld. AO to restrict the disallowance u/s 36(1)(iii) to Rs.98,936/-, being the differential of interest income and interest expenditure.

6. The appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 25th April, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/04/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.